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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

AMRAN MOHAMED,

Defendant and Appellant.

D072680

(Super. Ct. No. SCD271748)

APPEAL from a judgment of the Superior Court of San Diego County, Michael S. Groch, Judge. Affirmed.

Lynelle K. Hee, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel, Meredith White and Stephanie H. Chow, Deputy Attorneys General, for Plaintiff and Respondent.

Amran Mohamed was originally charged with making criminal threats (Pen. Code,¹ § 422), resisting arrest (§ 148, subd. (a)(1)), and battering a police officer (§ 243, subd. (b)). It was further alleged that she had suffered a prison prior (§ 667.5, subd. (b)).

Mohamed entered into a plea agreement under which she pleaded guilty to criminal threats and the remaining charges and allegations were dismissed. The parties agreed to a grant of formal probation. The parties agreed to her release from custody and credit for time served if the probation report was positive and Mohamed appeared for sentencing.

Mohamed failed to appear for her probation interview and failed to appear for sentencing. When she finally appeared for interview and for sentencing, the court granted formal probation, subject to 365 days in custody with a provision for release to a residential treatment program after 135 days of actual custody. At the suggestion of the probation officer, and over defense objection, the court imposed a search condition which included search of "computers and recordable media." Defense counsel argued there was no nexus between the crime and an electronic search condition. The trial court overruled the objection finding Mohamed extremely difficult to supervise on probation and that the condition was necessary to try to prevent her ultimately being sent to prison.

Mohamed appeals challenging only the portion of the Fourth Amendment waiver relating to "computers and recordable media." She claims the condition violated *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) for lack of nexus to the crime and that it is

¹ All further statutory references are to the Penal Code unless otherwise specified.

constitutionally overbroad. The People argue that the challenge, based on the claim the condition is overbroad, has been forfeited. We are satisfied the extensive argument of defense counsel made the court and the parties aware of the nature of the challenge. We will address the merits of Mohamed's contention. We will, however, find the imposition of the broad Fourth Amendment waiver in this case was well within the court's discretion and was appropriately tailored to the defendant's need for close supervision. We will affirm the judgment.

STATEMENT OF FACTS

Since this appeal is from a plea of guilty, it is sufficient to note the factual basis for the plea was that Mohamed unlawfully and willfully threatened another and caused that person to be in sustained fear.

DISCUSSION

By the time of sentencing in this case, Mohamed had accumulated 14 misdemeanor convictions, one prior felony conviction, seven grants of probation and a prison commitment following persistent violations of probation, all of which occurred since 2012. Mohamed had a substance abuse issue, multiple theft convictions and had failed to appear for her probation interview and sentencing in this case. The current crime did not involve the use of any electronic device, but the probation department and the trial court were of the view Mohamed would not likely willingly comply with conditions of probation and that her only hope to succeed on probation would be very close supervision. We will evaluate Mohamed's contentions in light of her criminal history and potential for probation violations.

A. Legal Principles

The validity of so-called electronic search conditions of probation is currently before our Supreme Court (*In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923). We are aware the court has granted review in multiple cases raising the same issue. The court will ultimately provide guidance on this subject, however, pending such guidance we must make our best effort to resolve the cases presented to us.

Our court has addressed cases presenting similar arguments to those presented here. We discussed such arguments in *People v. Acosta* (2018) 20 Cal.App.5th 225; *People v. Nachbar* (2016) 3 Cal.App.5th 1122, review granted December 14, 2016, S238210; and *People v. Trujillo* (2017) 15 Cal.App.5th 574, review granted November 29, 2017, S244650 (*Trujillo*). In those cases, we found the identical search condition to be reasonable under *Lent, supra*, 15 Cal.3d 481, and narrowly tailored to meet the proper balance of constitutional rights and the need for probation supervision.

In *Trujillo* we set out the legal principles for the *Lent* analysis:

"Probation is not a right, but an act of leniency that allows a defendant to avoid imprisonment. [Citation.] When an offender avoids incarceration by accepting probation, state law authorizes the sentencing court to impose conditions that are 'fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and . . . for the reformation and rehabilitation of the probationer' [Citation.] Under this code section, 'courts have broad discretion to impose [probation] conditions to foster rehabilitation and to protect public safety' [Citation.] [¶] But this broad discretion 'is not without limits.' [Citation.] '[A] condition of probation must serve a purpose specified in the statute,' and conditions regulating noncriminal

conduct must be ' "reasonably related to the crime of which the defendant was convicted or to future criminality. . . . " ' [Citation.] In *Lent*, the California Supreme Court held a probation condition is 'invalid' under this standard only if the condition ' "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality." ' (*Lent, supra*, 15 Cal.3d at p. 486.) 'This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.' [Citation.] We review the reasonableness of a probation condition for an abuse of discretion." (*Trujillo, supra*, 15 Cal.App.5th at p. 582; italics omitted.)

Regarding allegations of constitutional overbreadth, we said:

" ' "A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." [Citation.] "The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." ' " [Citation.] We review 'constitutional challenges to probation conditions de novo.' " (*Trujillo, supra*, 15 Cal.App.5th at p. 586.)

A. Analysis

The parties do not dispute that the crime in this case did not involve the use of electronic devices. The validity of the challenged condition depends on whether the condition was reasonably necessary to allow the probation officer to supervise an extremely difficult probationer. Since there was an objection to the condition, we have the benefit of the trial court's reasoning and the probation officer's recommendations. On the record before us we are convinced the trial court properly imposed the challenged condition.

The court and the probation officer noted that Mohamed had been almost constantly involved in criminal offenses. She was convicted of stealing a smart phone and a GPS device from the person of another. She was granted probation and ultimately revoked on probation and sent to prison.

Mohamed has accumulated 14 misdemeanor convictions in a five to six year period, received seven grants of probation, and suffered multiple revocations of her probation. The offenses involved thefts, drugs and alcohol, and demonstrated her unwillingness, or inability to comply with probation. She failed to appear for sentencing and her probation interview, and falsely accused the police officer in the case with sexual assault during the arrest. Both the court and the probation officer reasoned that Mohammed was very difficult to supervise and would likely not willingly comply with her probation conditions. Such reasoning is supported by the record.

We cannot say the condition is overbroad. Condition 6n, which contains the challenged phrase, is a general Fourth Amendment waiver, which is not challenged in this case. Mohamed has not demonstrated how the condition is overbroad or how it could be more narrowly tailored. Allowing the probation officer access to Mohamed's electronic devices, if she ever acquires any, is necessary for the officer to monitor her actions when she is at great risk of further criminality and a return to prison.²

² There is something of an academic nature of the challenge to the electronic search condition. Mohamed has been homeless and does not own a telephone or computer. Whether she will ever acquire such devices, without stealing them, is somewhat speculative.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.